

8

UNITED STATES DISTRICT COURT

For the
Eastern District of Michigan

LA GRASSO BROS., INC.
5001 Bellevue
Detroit, Michigan 48202
(313) 579-1455

Case No. 2:10-cv-10711-MOB-VMM
Hon. Marianne O Battani

Plaintiff

v.

AMERICAN FOODSERVICE, LLC
2740 Grange Hall Road
Fenton, Michigan 48430
(248) 760-8831

and

DAVID M. MAZUR, JR.
15219 Weller Court
Holly, Michigan 48442
(248) 328-9592

Defendants

10 OCT 22 P 3:57

FILED

MOTION FOR LEAVE TO SUPPLEMENT RESPONSE

Defendant, American Foodservice LLC, and David M. Mazur Jr., hereby submits this memorandum of Law in support of its Motion for leave to Supplement Response.

I. BACKGROUND

On Wednesday December 9, 2009 "Danny" the La Grasso Bros. order taker called Defendant David M. Mazur Jr., and told him that "American Foodservice needed to bring it's account within 7 day terms or we are done". Dave gave Danny the Check # and Dollar amount of the payment for that week. Danny stated "that was not good enough, we're done".

Plaintiff La Grasso Bros., had extended 30 + terms to Defendant American Foodservice LLC for the last four years dating as far back as November 18 2006. See Exhibit 1.

II. ARGUMENT

A. The Standard to Be Applied

Summary Judgment should not be granted when Parties set forth different times of payment then those set forth in 27 C.F.R. 46.2 (aa) (1) through (10). As Parties who elect to use different times of payment must reduce their agreement to writing and maintain a copy of the agreement at the supplier. The Plaintiff La Grasso Bros. did not comply with the terms of PACA.

The parties are permitted to agree to a date other than the default 10 day period provided by the regulations, they may not agree to a date that is more than 30 days after the date the goods are accepted for delivery. 7 C.F.R. 46.46(e)(2). Should they do so

the supplier will lose the benefits of the trust. The Plaintiff La Grasso Bros. extended terms to defendant American Foodservice LLC beyond 30 days. See Exhibit 2.

III. CONCLUSION

For the forgoing reasons, Defendants request to have this case be moved to the Circuit Court.

Dated this 22nd day of October 2010.


David M. Mazur Jr.

cc: Stephen P. Stella (first class mail and via facsimile @ [313] 963-4614)
422 W. Congress, Suite 400
Detroit, MI 48226

-and-

Maria C. Simon (first class mail and via facsimile @ [202] 364-2731)
c/o McCarron & Diess
4530 Wisconsin Ave., NW Suite 301
Washington, DC 20016

EXHIBIT 1



A HACCP Compliant Company
 5001 Bellevue • P.O. Box 2638
 Detroit, Michigan 48202-2638
 (313) 579-1455

Remit to:
 LaGrasso Bros. Inc.
 PO BOX 673444
 DETROIT, MI 48267-3444

PAGE 1

DATE: 11/18/06

AM00002

AMERICAN FOODSERVICE
 15219 WELLS COURT
 HOLLY MI 48442

STATEMENT

OVERDUE ACCOUNTS WILL BE SUBJECT TO
 A 1½% CHARGE PER MONTH, AN ANNUAL
 RATE OF 18%.

SALESMAN: JJN

INVOICE	DATE	DEBITS	CREDITS	REFERENCE	BALANCE	AGE
00122856	10/18/06	1,233.25			1,233.25	30
00122858	10/18/06	166.00			166.00	30
00123175	10/19/06	224.50			224.50	
00125350	10/25/06	1,533.40			1,533.40	
00127398	10/31/06	594.10			594.10	
00127574	11/01/06	1,124.15			1,124.15	
00129877	11/07/06	679.35			679.35	
00130361	11/08/06	952.25			952.25	
00130394	11/08/06	8.65			8.65	
00130396	11/08/06	15.95			15.95	
00130679	11/09/06	178.80			178.80	
00132678	11/15/06	1,840.65			1,840.65	
00132918	11/15/06	28.00			28.00	
TOTALS		8,579.05	.00	OPEN BAL	8,579.05	
PLEASE INCLUDE INVOICE NUMBERS WITH YOUR REMITTANCE						

OVER 90 DAYS	60-DAYS	30-DAYS	CURRENT	ON ACCOUNT	NET DUE
.00	.00	1,339.25	7,179.80	.00	\$8,579.05

EXHIBIT 2

La Grasso Bros.
INC.

A HACCP Compliant Company
5001 Bellevue • P.O. Box 2638
Detroit, Michigan 48202-2638
(313) 579-1455

PAGE 1

AMERICAN FOODSERVICE
2740 GRANGE HALL ROAD
FENTON MI 48430

DATE: 09/12/09

AM0002

STATEMENT

SALESMAN: JLIN

OVERDUE ACCOUNTS WILL BE SUBJECT TO
A 1½% CHARGE PER MONTH, AN ANNUAL
RATE OF 18%.

INVOICE	DATE	DEBITS	CREDITS	REFERENCE	BALANCE	AGE
00469437	08/10/09	3,345.60		P.O. DAVE	3,345.60	30
00469561	08/10/09	26.20			26.20	30
00470120	08/12/09	4,080.35		P.O. DAVE	4,080.35	30
00471245	08/15/09	1,177.17			1,177.17	
00471711	08/17/09	3,280.15		P.O. DAVE	3,280.15	
00471804	08/17/09	49.70			49.70	
00471810	08/17/09	29.40			29.40	
90078474	08/17/09		-116.15	SD:00470120	-116.15	
00472389	08/19/09	3,228.65		P.O. DAVE	3,228.65	
00472438	08/19/09	43.70			43.70	
00472447	08/19/09	164.50			164.50	
00473440	08/24/09	1,048.35		P.O. DAVE	1,048.35	
00474134	08/25/09	3,771.55		P.O. DAVE	3,771.55	
00474166	08/25/09	24.30			24.30	
00078860	08/25/09		-22.90	SD:00472389	-22.90	
00475112	08/28/09	3,679.05		P.O. DAVE	3,679.05	
00476342	09/01/09	3,566.65		P.O. DAVE	3,566.65	
00476369	09/01/09	61.85			61.85	

OVER 90 DAYS

60-DAYS

30-DAYS

CURRENT

ON ACCOUNT

NET DUE



PAGE

2

A HACCP-Compliant Company

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Detroit, Michigan 48202-2638

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AMERICAN FOODSERVICE
2740 GRANGE HALL ROAD
FENTON MI 48430

STATEMENT

OVERDUE ACCOUNTS WILL BE SUBJECT TO
A 1½% CHARGE PER MONTH, AN ANNUAL
RATE OF 18%.

SALESMAN: JJN

INVOICE	DATE	DEBITS	CREDITS	REFERENCE	BALANCE	AGE
00477431	09/04/09	3,249.35		P.O. DAVE	3,249.35	
00478379	09/08/09	395.05			395.05	
00478748	09/09/09	3,573.40		P.O. DAVE	3,573.40	
00478817	09/09/09	41.25			41.25	
90079551	09/09/09		-31.50	SO:00477431	-31.50	
00479835	09/12/09	1,623.65		P.O. DAVE	1,623.65	
TOTALS		36,459.87	-170.55	OPEN BAL	36,289.32	
PLEASE INCLUDE INVOICE NUMBERS WITH YOUR REMITTANCE						
PAST DUE						

OVER 90 DAYS	60-DAYS	30-DAYS	CURRENT	ON ACCOUNT	NET DUE
.00	.00	7,452.15	28,837.17	.00	\$36,289.32